

Energistics/OSDUF Membership Terms Rider

1. **Membership.** Upon execution of this Energistics Membership Terms Rider (these "Terms") Member will become a member of Energistics subject to Member's compliance with the provisions hereof including, but not limited to, the Company Policies, and as otherwise specified by Energistics from time to time. Member understands that Energistics may, from time to time, use the names and/or logos of members in literature and other communications distributed publicly for the purpose of identifying and/or describing Energistics membership, and Member hereby consents to the use of its name and/or logo solely to identify Member as a member of Energistics in any such literature or communications for that limited purpose.
2. **Energistics Dues.** Membership is conditioned upon Member's payment of Energistics Dues determined in accordance with the By-Laws from time to time.
3. **Taxes.** Member is responsible for, and shall pay when due, any and all taxes, fees and charges levied or imposed in connection with or relation to its membership in Energistics (other than taxes on Energistics' net income). If Member is required by law to make any deduction or to withhold from any sum payable to Energistics hereunder, then the sum payable by Member upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Energistics receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Energistics would have received and retained in the absence of such required deduction or withholding.
4. **Tax Exempt; Not for Profit.** Energistics is organized for one or more of the purposes permitted by Section 501(c)(6) of the Internal Revenue Code. Member acknowledges that Energistics is a tax-exempt, nonprofit corporation, and that Member (i) will not earn any direct return on, or refund or restoration of, any amounts paid to Energistics unless specifically agreed upon, in writing, between Energistics and such Member, and (ii) will not take any action that would jeopardize Energistics' qualification as an exempt organization under Section 501(c)(6) of the Internal Revenue Code. Member acknowledges that the arrangements set forth in this Section do not in any way constitute an attempt to engage in a for-profit activity in connection with Energistics, and are not the grounds upon which Member has agreed to enter into these Terms. Member acknowledges that the tax-exempt, not-for-profit nature of Energistics is not represented to have any effect on Member's tax liability or obligations, and Member shall seek independent tax advice regarding its own tax liability and obligations.
5. **Compliance with Applicable Law.** Member hereby authorizes Energistics to take such action(s) as may be required to satisfy all reporting and other requirements of applicable law, with respect to the membership of Member including, but not limited to, the reporting requirements of the National Cooperative Research and Production Act. Member agrees at all times to comply with the provisions of the Company Policies and all laws, rules, regulations and orders of any governmental body applicable to its membership in Energistics and activities hereunder. Member will indemnify and hold Energistics and its directors, officers and other members harmless from and against any liability, damage, claim, action or judgment arising from Member's failure to so comply.
6. **Anticorruption.** Energistics and Member, including their respective employees, directors, agents or other persons acting on their behalf, have not, directly or indirectly, taken any action that would cause either party to be in violation of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), or any other anticorruption or anti-bribery laws applicable to Member (collectively with the FCPA, the "Anticorruption Laws"). Energistics and Member, including their respective employees, directors, agents or other persons acting on their behalf, have not, directly or indirectly, corruptly given, loaned, paid, promised, offered or authorized payment of money or anything of value to any "foreign official" as defined in the FCPA or, in violation of applicable law, to any other government official, to secure any improper advantage or to obtain or retain business for any person or to achieve any other purpose prohibited by the Anticorruption Laws. Energistics and Member have each established and implemented reasonable internal controls and procedures intended to ensure compliance with the Anticorruption Laws.
7. **Energistics Offerings.** Energistics Standards, specifications, software and data published or distributed by Energistics (collectively, the "Energistics Offerings") are generally made available to its members free of charge (other than reasonable charges for, among other things, without limitation, media, copying and handling), and subject to any obligations of Energistics to third parties who are not Members or Affiliates of any Member. Member understands that the use, distribution, modification and other exploitation of such Energistics Offerings may be subject to (i) the terms of separate license agreements between Energistics and Member, and (ii) the Information and Intellectual Property Policy. Energistics Offerings may, from time to time, include items or services (e.g., training, consulting, etc.) which require the payment of additional fees and are not included in Energistics Dues.
8. **Termination.** Member acknowledges that any material breach of this Agreement will constitute grounds for the termination of its membership with Energistics. This Agreement will terminate automatically upon the termination of Member's membership in Energistics and/or The Open Group OSDU Forum including, but not limited to, the termination of such Member's The Open Group Membership Agreement.

9. Survival. The provisions of Sections 1-7, 10 of these Terms, together with the terms of the Information and Intellectual Property Policy, will survive the termination of these Terms.
10. Miscellaneous.
- 10.1. Relationship of the Parties. Nothing contained in this Agreement will be construed as creating a partnership or joint venture by or between Member and Energistics or any other participant in any Energistics Activity, or constitute either party as the agent of the other.
- 10.2. Waiver. No benefit or right accruing to either party under these Terms or any amendment or addendum thereto will be deemed to be waived unless the waiver is reduced to writing, expressly refers to these Terms by date and signatories, and is signed by both parties to these Terms. The waiver, in one or more instances, of any act, condition or requirement stipulated in these Terms will not constitute a continuing waiver or a waiver of any other act, condition or requirement or a waiver of the same act, condition or requirement in other instances, unless specifically so stated in such written agreement.
- 10.3. Entire Agreement. These Terms, together with the Company Policies, constitute the parties' entire agreement with respect to the subject matter hereof, and all prior agreements or understandings between them concerning such subject matter are hereby either superseded and terminated in their entirety or merged herein, and shall have no further force or effect.
- 10.4. Amendment. These Terms may be modified only by a writing signed by both parties. These Terms will not be supplemented or modified by any course of dealing or other trade usage.
- 10.5. Counterparts. These Terms may be executed in counterparts and transmitted by facsimile copy or e-mail attachment, each of which will constitute an original and, when taken together, will constitute these Terms and will become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.
- 10.6. Notices. All notices required or permitted to be given hereunder must be in writing and shall be either delivered by next day express courier or mail, or by email to the attention of the addressees specified in the Notice Address section of the signature page below (or to such changed addressee/address as may be specified from time to time by notice duly given). Notice will be deemed to have been given upon receipt by on the next business day if express couriered or mailed, or immediately following email transmission.
- 10.7. Governing Law. These Terms will be governed by the laws of the State of Delaware, U.S.A. without giving effect to its principles of conflicts of laws.
- 10.8. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to these Terms, or the breach, termination or invalidity thereof, will be finally settled by binding arbitration in accordance with the Arbitration Rules of the American Arbitration Association and in accordance with the Texas Arbitration Act. There shall be one arbitrator appointed by agreement of the parties or, failing agreement, by the American Arbitration Association in Houston, Texas. The arbitration shall be conducted in Houston, Texas, and all proceedings shall be conducted in the English language. Disputes about arbitration procedure shall be resolved by the arbitrators or failing agreement, by the American Arbitration Association. The arbitrator shall be authorized to grant interim relief, including to prevent the destruction of goods or documents involved in the dispute, protect trade secrets and provide for security for a prospective monetary award. In no event shall punitive damages be assessed against either party. The prevailing party shall be entitled to an award of reasonable attorney fees incurred in connection with the arbitration in such amount as may be determined by the arbitrator. The award of the arbitrator shall be the sole and exclusive remedy of the parties and shall be enforceable in any court of competent jurisdiction, subject only to revocation on grounds of fraud or clear bias on the part of the arbitrators. Notwithstanding the foregoing, the parties shall be entitled to seek injunctive relief, security or other equitable remedies from any court of competent jurisdiction in furtherance of the arbitration proceedings.
- 10.9. Assignment. Member shall not assign these Terms (whether expressly, by implication, by operation of law including any merger or sale of assets or business), or delegate its performance under these Terms, to any third party and the rights, powers and privileges of membership in Energistics may not be sold, pledged, encumbered, assigned or otherwise transferred by Member in any manner whatsoever, except to an Affiliate of Member which agrees to be bound by all terms and conditions hereof. Any purported transfer, assignment, or delegation without the appropriate prior written consent shall be null and void when attempted and of no force and effect. These Terms shall be binding upon the successors and permitted assigns of the parties.
- 10.10. Headings. All section headings herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation or expansion of the scope of the particular sections to which they refer.
- 10.11. Severability. Whenever possible, each provision of these Terms will be interpreted so as to be effective and valid under applicable law, but if any provision is held to be invalid under applicable law, either in whole or in part, the provision will be ineffective only to the extent of such invalidity, and the remaining provisions of these Terms shall remain in full force and effect.

10.12. No Adoption Required; Warranty Disclaimer. Nothing in these Terms shall require or be deemed to require Member to adopt, implement or support any Energistics work item nor to use any Energistics work item in any product or service offering. ENERGISTICS MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, UNDER THESE TERMS, AS TO THE ACHIEVEMENT OF ANY GOAL, OR THE DEVELOPMENT, AVAILABILITY OR ADOPTION OF ANY STANDARD, SPECIFICATION OR TECHNOLOGY AND ANY SUCH WARRANTY IS EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

10.13. Damages & Limit on Liability. In no event shall Energistics be liable to Member, or any person claiming through Member, for any indirect, incidental, consequential, special, punitive or exemplary damages or lost profits for damages or losses due to action or inaction of Energistics during the term of such Member's membership in Energistics, even if Energistics has been advised of the possibility of such damages. These limitations shall apply even if any remedies fail of their essential purpose. Under no circumstances will Energistics' aggregate liability to Member under this Agreement, regardless of the form of any claim or action or theory of liability (including contract, tort, or warranty), exceed the aggregate amount paid or payable by Member to Energistics hereunder during the preceding 12-month period.

10.14. Joint Preparation. The parties declare that they have contributed to the drafting of these Terms or have had them reviewed by their counsel before signing. It is expressly agreed that these Terms shall not be construed against any party on the basis of who drafted them or who supplied the form of these Terms. Each party agrees that it has been purposefully drawn and correctly reflects their understanding of the transaction that it contemplates.

10.15. Effective Date & Renewal. This Agreement takes effect on the last date signed below ("Effective Date") and shall renew automatically on Member's The Open Group OSDU Forum membership anniversary.

11. Defined Terms.

11.1. "Affiliate" means a corporation, company or other entity more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly by a party hereto, but only for so long as such ownership or control exists. For purposes hereof, "indirect" ownership or control means that a series of entities can be specified between one entity and another, in which each such entity in the series directly owns or controls more than fifty percent (50%) of the outstanding shares or securities of the next entity in such series.

11.2. "Anticorruption Laws" has the meaning set forth in Section 5 above.

11.3. "Antitrust Policy" means the Energistics Antitrust Policy located at <https://energistics.org/sites/default/files/2022-10/energisticsantitrust-compliance-policy.pdf>

11.4. "By-Laws" means the By-Laws of Energistics, as they may be amended from time to time.

11.5. "Certified Product License Agreement" means the Energistics Certified Product License Agreement located at https://energistics.org/sites/default/files/2023-06/Energistics_Certified_Product_License_Agreement_2023ff.pdf

11.6. "Company Policies" means, collectively, the Energistics (i) Antitrust Policy, (ii) Information and Intellectual Property Policy, (iii) Certified Product License Agreement, and such other policies and procedures as may be adopted by the Board from time to time.

11.7. "Energistics Activity" means any Energistics activity including, but not limited to, those activities conducted independently by Members and their employees, or third parties related or pertaining to the Standards.

11.8. "Energistics Dues" means that portion of The Open Group dues (as determined by The Open Group) paid by OSDU Forum Members which are attributable to Energistics membership.

11.9. "Energistics Offerings" has the meaning set forth in Section 7 above.

11.10. "ETP" means Energistics Transfer Protocol, a data exchange specification enables efficient transfer of data between applications.

11.11. "FCPA" has the meaning set forth in Section 5 above.

11.12. "Information and Intellectual Property Policy" means the Energistics Information and Intellectual Property Policy located at <https://energistics.org/intellectual-property-rights-disclosures>.

11.13. "Member" means the party identified as a member in these Terms.

11.14. "OSDU Forum" means The Open Group's OSDU Forum comprised of volunteers who are employees of participating member companies.

11.15. "OSDU Forum Member" or "OSDU Forum Members" means, individually or collectively, as the case may be, a member or members of The Open Group in good standing who (i) has/have executed and agreed to The Open Group Membership Agreement, and (ii) fulfilled all other requirements for participation in OSDU Forum as determined by The Open Group.

- 11.16. “PRODML” is a set of standards related to producing oil and gas wells, with a focus on data from the reservoir-wellbore boundary to the custody transfer point.
- 11.17. “RESQML” is an industry initiative to provide open, non-proprietary data exchange standards for the reservoir life cycle, from initial structural interpretation and modeling, to reservoir characterization, static and dynamic simulation, and production monitoring.
- 11.18. “Standard” or “Standards” means, individually or collectively, as the case may be of any one or more of the following: (i) WITSML, (ii) PRODML, (iii) RESQML, and (iv) ETP.
- 11.19. “Terms” has the meaning set forth in Section 1 above.
- 11.20. “The Open Group” means The Open Group, L.L.C., a Delaware limited liability company.

- 11.21. “The Open Group Membership Agreement” means the current form of membership agreement for The Open Group for participation in the OSDU Forum, including but not limited to The Open Group Membership Terms and The Open Group Standards Process, as incorporated by reference.
- 11.22. “The Open Group Membership Terms” means the current form of The Open Group Membership Terms located at <https://www.opengroup.org/membership/terms>
- 11.23. “The Open Group Standards Process” means the current form of The Open Group Standards Process located at <http://www.opengroup.org/standardsprocess/>
- 11.24. “WITSML” is an industry standard format for transferring data related to the well, wellbore, and drilling operations, either in real time or between applications and data stores.

IN WITNESS WHEREOF, the parties have executed this Membership Agreement, each representative warranting individually that he has the full right, power, and authority to execute it on behalf of the party he represents.

FOR AND ON BEHALF OF

 Member

 Signed

 Name

 Title

 Date

FOR AND ON BEHALF OF

ENERGISTICS CONSORTIUM INC.

 Signed

 Name

 Title

 Date

Notice Addresses:

Address: _____

Email: _____

Attention: _____

548 Market Street #54820
 San Francisco, CA 94931
 Email: energistics_legal@mail.opengroup.org
 Attention: Corporate Secretary